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[Redacted]

Advisor for Management

General Counsel

OGC HAS REVIEWED.

Revision of CIA Regulation [Redacted]

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1. Subsection [Redacted] entitled "Military leave" of the proposed CIA Regulation [Redacted] provides in part: "Employees directed by a local draft board or a reserve unit of the Armed Forces to report for physical examination will be granted leave with pay for the required period, not to exceed eight hours."

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2. Section [Redacted] as proposed, is evidently an adaptation of the amendment of June 26, 1951, to the Federal Personnel Manual. This provision states: "Agencies shall grant leave of absence to employees for the purpose of entering, determining physical fitness to enter, or performing training duty in the Armed Forces of the United States." (Z1-375, Section 35.2 (b)).

Note that no mention is made of what type of leave shall be granted. This may be attributed to the fact that this language was in turn adopted almost verbatim from Public Law 51, Section 9(g)(3), which, referring to employees in general states: "Any employee ... shall be granted leave of absence by his employer for the purpose of being inducted into, entering, determining his physical fitness to enter ... the Armed Forces of the United States."

3. Federal Personnel Manual (LI-7) provides that "military leave of absence with pay is granted for the purpose of training prospective member of the Armed Forces for active duty." Military leave "with loss of pay, time, or efficiency rating" is granted for specific periods, duties and based upon specific statutory authority which are enumerated in detail. Nowhere is express authority to grant military leave to "employees directed by local draft boards to report for physical examination." Mr. Herman C. Davis in the office of the Civil Service Commission which drafted the amendment referred to above, states that to give military leave for the leave of absence mentioned in the amendment would be "100% wrong" as military leave has a specific meaning. We are obliged to concur in this opinion.

4. If military leave cannot be granted for this purpose the question arises as to whether or not another type of compensatory leave may be granted. Speaking to several officials

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within the Agency it has been found that the policy in this respect in the past has not been clear. Some offices grant "administrative leave," others annual leave, perhaps still others leave without pay. Mr. Davis suggested that those who have in the past granted annual leave for this purpose would be on safer grounds as far as the Comptroller General is concerned, if they continued this practice rather than granting "administrative leave." "Administrative leave" in the Federal Personnel Manual is likewise granted for specific purposes among which no mention is found of leave for physical examinations for the purpose of entering the Armed Forces.

5. We suggest that since the amendment to the Federal Personnel Manual which initiated the proposed revision in our regulations, does not state what type of leave is to be granted or whether it is to be with or without pay, that the question will eventually be referred to the Comptroller General. Unless administrative policy determines that we would not object to being the one who has to plead this case to the Comptroller General, we should, until such time as a determination is made, grant annual leave or leave without pay for this purpose. We should definitely not grant "military leave" for this purpose.

6. Section K(2) of the proposed draft provides "members of the National Guard will be granted military leave with pay without charge to annual leave on all days of service to which they are ordered by competent authority." This terminology is vague and could be construed as granting military leave with pay to members of the National Guard during the entire time a National Guard unit was called into active service. We are not worried about this happening since the Comptroller General in 20 Comp. Gen. 150 stated, "all military leave of absence with pay is limited to periods of annual training as distinguished from active duty." We fail, however, to see the purpose in supplementing [] with [] which apparently covers the same situation with preferred terminology.

7. We suggest, therefore, that Section [] be omitted and that Section [] be amended to read as follows:

"Military leave for training purposes only (or for parade or encampment duty with the National Guard of the District of Columbia), not to exceed

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fifteen calendar days in any one calendar year will be granted with pay without charge to annual leave to members of reserve components of the Armed Forces of the United States. Saturdays and Sundays will be included in the fifteen calendar days leave period only when such leave includes the preceding Friday and the following Monday."

LAWRENCE R. HOUSTON

OGC/LRH/McD

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